

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AARON SMITH,

Plaintiff,

v.

MORRIS, et al.

Defendants.

)
)
)
)
)
)
)
)
)
)

No. 1:21-cv-00050-JRS-TAB

**ORDER SCREENING THE COMPLAINT,
DISMISSING DEFICIENT CLAIMS,
AND DIRECTING SERVICE OF PROCESS**

Plaintiff Aaron Smith, an inmate at Pendleton Correctional Facility, brings this action pursuant to 42 U.S.C. § 1983 and the Indiana Constitution, alleging the defendants violated his civil rights. Because Mr. Smith is a "prisoner" as defined by 28 U.S.C. § 1915A(c), this Court has an obligation under 28 U.S.C. § 1915A(a) to screen his complaint before service on the defendants.

**I.
SCREENING STANDARD**

Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss the complaint, or any portion of the complaint, if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017). *Pro se* complaints such as that filed by the plaintiff are construed liberally and held to "a less stringent standard than pleadings drafted by lawyers." *Cesal*, 851 F.3d at 720.

II. THE COMPLAINT

The complaint names the following defendants: Sgt. Morris and Ofc. C. Johnson, in their individual and official capacities. Mr. Smith is seeking nominal, compensatory, and punitive damages.

The complaint makes the following allegations: On September 29, 2020, Ofc. Johnson was transporting Mr. Smith from his cell to the showers. Ofc. Johnson and Sgt. Morris knew there was a substantial risk that Mr. Smith would be assaulted on his way to the showers but did not make reasonable efforts to prevent the assault. They specifically failed to take Mr. Smith through a back door that would have eliminated the risk of assault. When Ofc. Johnson and Mr. Smith passed offender Devon Brown on the way to the showers, Mr. Brown assaulted Mr. Smith with feces.

III. DISCUSSION

This action is brought pursuant to 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). "[T]he first step in any [§ 1983] claim is to identify the specific constitutional right infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

The Eighth Amendment requires prison officials to take reasonable measures to guarantee the safety of inmates and to protect them from harm at the hands of others. *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994). To prevail on a failure to protect claim, the plaintiff must prove:

(1) that he was at a substantial risk of serious harm that ultimately occurred, and (2) that the defendant was subjectively aware that the plaintiff was at a substantial risk of harm and failed to make reasonable efforts to protect the plaintiff from this substantial risk. *Id.* at 832-34.

Based on the screening standard set forth above, Mr. Smith's Eighth Amendment failure to protect claims **shall proceed** against Sgt. Morris and Ofc. Johnson in their individual capacities.

Mr. Smith's claims under Article 1, § 16 of the Indiana Constitution are **dismissed**. The Indiana Court of Appeals has held that a plaintiff may not bring a private action for damages under this constitutional provision. *Smith v. Ind. Dept. of Correction*, 871 N.E.2d 975, 985-86 (Ind. Ct. App. 2007) (citing *Fidler v. City of Indpls.*, 428 F.Supp. 2d 857, 865 (S.D. Ind. 2006)).

This summary includes all viable claims identified by the Court. All other claims are dismissed. If Mr. Smith believes the complaint includes additional claims, he has through **May 4, 2021**, to identify those claims.

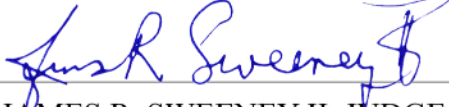
**V.
SUMMARY AND SERVICE OF PROCESS**

Mr. Smith's Eighth Amendment failure to protect claims **shall proceed** against Sgt. Morris and Ofc. Johnson in their individual capacities. All other claims are **dismissed**.

The **clerk is directed** pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants Sgt. Morris and Ofc. C. Johnson in the manner specified by Rule 4(d). Process shall consist of the complaint, dkt. [1], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of service of Summons), and this Order.

IT IS SO ORDERED.

Date: 4/26/2021



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

AARON SMITH
167146
PENDLETON - CF
PENDLETON CORRECTIONAL FACILITY
Inmate Mail/Parcels
4490 West Reformatory Road
PENDLETON, IN 46064

Electronic Service to the following IDOC officials at Pendleton Correctional Facility:

Sgt. Morris
Ofc. C. Johnson